

SHILPA GONDALIA

B.L.S. LL.B

ADVOCATE HIGH COURT

Resi :

Aradhana, Plot No. 127, Sector – 4,
Behind Saraswat Bank, Charkop,
Kandivali (W), Mumbai – 400 067
Cell : 98921 12772

-: TO WHOMSOEVER IT MAY CONCERN :-

Reg: 1/7th undivided share of Enid Anna Hayden (“Enid”) in the following properties viz.

(1) ALL THAT pieces and parcels of land or ground situate, lying and being at Village Mogra, Taluka Andheri in the registration district of Mumbai Suburban and bearing Survey No. 9A, Hissa No. 3-B (part), CTS No. 431 (part), admeasuring in aggregate 19,375 sq. mtrs. or thereabout (“the First Property”)

AND

(2) ALL THAT pieces and parcels of land or ground situate, lying and being at Village Mogra, Taluka Andheri in the registration district of Mumbai Suburban and bearing Survey No. 23A, Hissa No. 11 & 12, CTS No. 346, 346/1 - 346/6, 347, admeasuring in aggregate 1,727.50 sq. mtrs. or thereabout (“the Second Property”)

1. I have been requested by Omkar Realtors Andheri Project Private Limited (formerly known as ‘Satellite Vijay Developers Private Limited’), a company incorporated under the Companies Act, 1956 having its registered office at Omkar House, Off. Eastern Express Highway, Opp. Sion Chunabhatti Signal, Sion (East), Mumbai - 400 022, (“the Company” in short) to issue Title Certificate in respect of the abovementioned property.

2. I have perused the revenue records viz. the 7/12 extracts, property register cards, development plan remarks and copies of documents of title produced before me.

3. The facts relating to the First Property and the Second Property as they appear from the documents produced before me are as under:

(a) One Late Mr. Elias Cosmos Henriques (for short “Elias”) was the owner of and/or otherwise well and sufficiently entitled to all that piece and parcel of land or ground situate, lying and being at Village Mogra, Taluka Andheri in the Registration District of Mumbai Suburban bearing Survey No. 9A, Hissa No. 3-B (part), CTS No. 431 (part), admeasuring in aggregate 19,375 sq. mtrs. or thereabout, more particularly described in the **FIRST SCHEDULE** hereunder written and hereinafter referred to as “the First Property”;



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- (b) One Late Mrs. Sera Mary Henriques (alias Serah Mary Henriques alias Mrs. Elias Henriques alias Sere Mary Felicks), wife of Elias (for short “Serah”) was the owner of and/or otherwise well and sufficiently entitled to all that piece and parcel of land or ground situated, lying and being at Village Mogra, Taluka Andheri in the Registration District of Mumbai Suburban bearing Survey No. 23A, Hissa No. 11 & 12, CTS Nos. 346, 346/1 to 346/6 and 347, admeasuring in aggregate 1,727.50 sq. mtrs. or thereabout, more particularly described in the **SECOND SCHEDULE** hereunder written and hereinafter referred to as “the Second Property”;
- (c) The First Property and the Second Property shall hereinafter be collectively referred to as “the Entire Property”;
- (d) Elias died intestate on 24th May, 1940, leaving behind him, according to the Law of Succession by which Elias was governed at the time of his death as his only legal heirs, his widow viz. Serah, his six sons viz. (i) Anthony Cosmos Henriques (“Anthony”) (ii) Kenneth Irwin Henriques (“Kenneth”), (iii) Joseph Peter Henriques (“Joseph”), (iv) Siegfried Lambert Henriques (“Siegfried”), (v) Frederick Nanfer Henriques (“Frederick”), and (vi) Cyril Edmond Henriques (“Cyril”), and his one daughter viz. Mrs. Enid Anna Hayden (“Enid”);
- (e) Upon death of Elias, 1/3rd (one-third) share of the First Property devolved upon Serah and the balance 2/3rd (two-third) share of the First Property devolved equally amongst six sons and one daughter of Elias and Serah;
- (f) Serah also died on 1st October, 1985, leaving behind her, according to the Law of Succession by which Serah was governed, at the time of her death, as her only legal heirs, her six sons viz. (i) Anthony, (ii) Kenneth, (iii) Joseph, (iv) Siegfried, (v) Frederick, and (vi) Cyril, and one daughter viz. Enid;
- (g) Enid, the daughter of Elias and Serah sought to propound a purported Will dated 2nd September, 1985 (for short “the said Will”) alleged to be the last Will and Testament of Serah. Anthony, Kenneth, Cyril, Joseph, Siegfried and Frederick challenged the said Will. Hence, the said Will is the subject matter of Testamentary Suit No. 48 of 1989 (for short “the said Testamentary Suit”) which is pending for adjudication before the Hon’ble High Court of Judicature at Bombay.

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- (h) I have gone through the provisions contained in the said Will. Clause No. 2 of the said Will refers to the Entire Property as “Immovable Property at Jogeshwari - Mogra” and reads as follows:

“2. Immovable Property at Jogeshwari - Mogra:

There are three immovable properties at Jogeshwari bearing Survey Nos. 23A, 23B & 9A. The properties bearing Survey No. 23A & 23B are solely in my name and I wish after my death both these plots whether it be by way of land or money should be equally divided amongst my six sons and my daughter.

Regarding plot bearing Survey No: 9A which stands in the names of my seven children and myself, my portion of share is $1/3^{rd}$. This $1/3^{rd}$ share of mine in the form of money when the property is sold, should be divided into four equal portions and shared out as under:-

1st Portion: To be equally divided between:-

- a) Harlene (Anthony's daughter)
- b) Ryberg & Michelle (Cyril's children) and
- c) Venesa, Joeneel & Mark (Josie's children)

2nd Portion: To be equally divided between:-

- a) Roseanna, Suzie, Conrade & Malcome (Kenneth's children)
- b) Stanzie, Hannel, Leezel, Megin, Kirth & Zolin (Freddy's children)

3rd Portion: To be equally divided between:-

Andre, Schubert & Croydon (Wallace's sons)

4th Portion: Will go in the name of:-

Zilpher Hayden (Wallace's Daughter)

With this money National Saving Certificates should be purchased in the Joint names of each child and his/her father and only on the day the child chooses his/her state of life or on their attaining the age of 30 years, whichever comes earlier, shall this money be withdrawn and given to the children as her gift.

In the event of this property not being sold, then the father of each child will have the right or be entitled to that portion of his child's share as mentioned above”.

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- (i) In the event, irrespective of the said Will, being adjudicated as valid and legally binding or otherwise in the said Testamentary Suit, the Second Property, to which Serah was absolutely entitled to devolves, in any case, either by operation of law through succession or by virtue of the said Will, equally on seven children of Serah i.e. six sons viz. Anthony, Kenneth, Joseph, Siegfried, Frederick, and Cyril, and one daughter viz. Enid, each having $1/7^{\text{th}}$ (one-seventh) undivided share, right, title and interest in the Second Property;
- (j) In so far as the First Property is concerned, to which Elias was absolutely entitled to, upon demise of Elias, $1/3^{\text{rd}}$ share of the First Property devolved upon Serah (being widow of Elias), as per law of intestate succession, and the remaining $2/3^{\text{rd}}$ share of the First Property devolved equally upon seven children of Elias i.e. six sons viz. Anthony, Kenneth, Joseph, Siegfried, Frederick, and Cyril, and one daughter viz. Enid, each having $1/7^{\text{th}}$ undivided share in the remaining $2/3^{\text{rd}}$ share of the First Property;
- (k) In so far as the $1/3^{\text{rd}}$ share of Serah in the First Property (**‘the said share of Serah’**) is concerned, the same is subject matter of the said Will which is disputed and hence subject to the said pending Testamentary Suit. If the Hon’ble Bombay High Court in the said pending Testamentary Suit declares the said Will as valid and binding then Clause 2 of the said Will, which deals with the said share of Serah, would come into operation. The said Clause 2 is reproduced heretobefore and the same provides for sale of the said share of Serah and distribution of such share in the form of money amongst various grand children of Serah. The said clause 2 further provides that in the event the said share of Serah is not sold then father of each child will have the right or be entitled to that portion of his child’s share as mentioned above. If however the Hon’ble Bombay High Court in the said pending Testamentary Suit declares the said Will as invalid and not binding then the said share of Serah will devolve on the said six sons of Serah (viz. Anthony, Kenneth, Joseph, Siegfried, Frederick, and Cyril) and one daughter of Serah viz. Enid, equally.
- (l) Thus in the event if the Hon’ble Bombay High Court in the said pending Testamentary Suit declares the said Will as invalid and not binding, then in that event, Anthony, Kenneth, Joseph, Siegfried, Frederick, Cyril and Enid shall have equal share/s in the Entire Property i.e. each one having $1/7^{\text{th}}$ undivided share, right, title and share in the said share of Serah. In the event if the Hon’ble Bombay High Court in the said pending Testamentary Suit declares the said Will as valid and binding then various grand-children of Serah, as mentioned in clause 2 of the said

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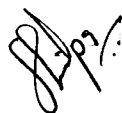
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Will, shall have share, in the form of money, in the sale proceeds of the said share of Serah.

- (m) I have been informed that the S. C. Suit No. 2722 of 1986 (hereinafter referred to as “the said S. C. Suit”) was filed by Enid and her husband viz. Wallace Hayden against Anthony, Cyril, Frederick and Joseph and Order dated 21st November, 1986 was made inter alia in terms of prayer (b) of the said Notice of Motion No. 2305 of 1986 affecting the Entire Property.
- (n) In the meanwhile, Wallace Hayden (husband of Enid) died intestate at Mumbai 20th April, 2010 leaving behind Enid and his children viz. Andre Wallace Hayden, Schubert Wallace Hayden, Croydon Wallace Hayden and Zilpher D’Silva, as his only heirs and legal representatives as per the Law of Succession by which the said Wallace Hayden was governed at the time of his death.
- (o) The injunction/restrictive orders passed in S. C. Suit No. 2722 of 1986 came to be vacated by filing of Consent Terms dated 7th August, 2015 in the said S. C. Suit No. 2722 of 1986 between Enid being the Plaintiff and Cyril and Anthony, being the Defendants (hereinafter referred to as “the said Consent Terms”). The said Consent Terms inter alia recorded that:
- i. each of the six sons and the one daughter of late Serah were entitled to 1/7th undivided share, right, title and interest in the immovable properties at Jogeshwari East i.e. the Entire Property. Thus Enid, purporting to be in possession of the said Will and claiming probate of the said Will in the said Testamentary Suit, conceded that she and her brothers, each have one-seventh undivided share in the Entire Property.
 - ii. Andre Wallace Hayden, Schubert Wallace Hayden, Croydon Wallace Hayden and Zilpher D’Silva, plaintiff nos. 2(a) to 2(d) therein, in their capacity as the heirs of Late Wallace Hayden and also in their personal capacity, shall not claim any right, title and interest in the First Property and shall not be entitled to any share in the First Property;
 - iii. Cyril and Anthony shall not have any objection to Enid selling and/or disposing off her undivided share in the Entire Property as she may deem fit.



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(p) Pursuant to the aforesaid Consent Terms, Enid executed Indenture of Conveyance dated 8th August, 2015 in favour of the Company whereby she has sold, transferred and conveyed to the Company her 1/7th undivided share, right, title and interest in the Entire Property (mentioned therein as 11/42nd share in the First Property and 1/7th share in the Second Property) at and for the consideration and on the terms and conditions recorded therein. The said Deed of Conveyance was duly registered under Sr. No. BDR-4/7494/2015 on 7th October, 2015.

4. I have relied upon the Search Report dated 9th February, 2016 of Mr. Ganesh Gawde.

5. I have not issued any public notice in respect of the undivided share of Enid in the Entire Property. I have however been informed by the Company that the Company had earlier caused public notice to be issued in respect of the undivided share of Enid in the Entire Property; however, no claims were received in that behalf.

6. Perusal of 7/12 extracts, Kami-Jasti Patrak and Property Registry Cards in in respect of the Entire Property show the following:

Survey No. as per 7/12 extract	Names of Holder as per 7/12 extract	Corresponding CTS No	Names of Holders as per Property Registry Card
9A/3B (pt)	Serah and her seven children i.e. Anthony, Kenneth, Cyril, Joseph, Siegfried, Frederick and Enid	431 (part)	Serah and her seven children i.e. Anthony, Kenneth, Cyril, Joseph, Siegfried, Frederick and Enid
23A/12	Serah	346, 346/1 to 6	Serah However name of one Pascoal Baptista appears as 'Imla Malik' (structure holder) in the column of 'other remarks'

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7. I have also been informed that:

- (a) Name of one Pascoal Baptista ('Pascoal' for short) appeared in Village Forms 7/12 in respect of the Entire Property in 'Pik & Pahani' column. However, the name of Pascoal was removed from Village Forms 7/12 in respect of the Entire Property vide Order dated 6th March, 1996. On perusal of recent village form 7/12, name of Pascoal or his heirs does not appear.
- (b) Perusal of the Search Report dated 9th February, 2016 reveals that heirs of Pascoal appear to have executed a Deed of Assignment for assignment inter alia of their alleged rights in the Entire Property in favour of one Krishna Ventures Limited by registered Deed of Assignment dated 30th December, 2010. Perusal of the aforesaid Deed of Assignment reveals that heirs of Pascoal do not have any writing or instrument in support of their claim on the Entire Property. They claim possession of the Entire Property as 'kul' i.e. tenant or through adverse possession. These claims have been rejected in various court proceedings. In the circumstance in our opinion the claim of heirs of Pascoal appears to be devoid of merit. As heirs of Pascoal do not appear to have legal claim on the Entire Property, assignment if any executed by these heirs of Pascoal/ heirs of Nazareth to M/s Krishna Ventures Limited is of no consequence and would not, in our opinion, affect title of owners of the Entire Property.

8. I have perused the Development Plan Remarks dated 12th March, 2013 issued by the Municipal Corporation of Greater Mumbai in respect of the Entire Property and certain other properties which shows that the Entire Property falls in 'Residential' zone and is reserved for Public Housing (shown as part of larger reservation), Play Ground & Tank, and Secondary School.

9. In the premises aforesaid, and on the basis of the declaration given by the Authorised signatory of the Company and subject to the above, I certify that title of Company in respect of the undivided share of Enid in the Entire Property (mentioned therein as 11/42nd share in the First Property and 1/7th share in the Second Property) conveyed in terms of the Deed of Conveyance dated 8th August, 2015 duly registered under Sr. No. BDR-4/7494/2015 on 7th October, 2015 appears to be clear and marketable and free from all encumbrances.



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THE FIRST SCHEDULE ABOVE REFERRED TO:
(Description of ‘the First Property’)

ALL THAT pieces and parcels of land or ground situate, lying and being at Village Mogra, Taluka Andheri in the registration district of Mumbai Suburban and bearing Survey No. 9A, Hissa No. 3-B (part), CTS No. 431 (part), admeasuring in aggregate 19,375 sq. mtrs. or thereabout.

THE SECOND SCHEDULE ABOVE REFERRED TO:
(Description of ‘the Second Property’)

ALL THAT pieces and parcels of land or ground situate, lying and being at Village Mogra, Taluka Andheri in the registration district of Mumbai Suburban and bearing Survey No. 23A, Hissa No. 11 & 12, CTS No. 346, 346/1 - 346/6, 347, admeasuring in aggregate 1,727.50 sq. mtrs. or thereabout

Dated this 16th day of March, 2016


(Shilpa Gondalia)
Advocate